

**In the United States District Court
Southern District of Georgia
Augusta Division**

Steven N. Caviness,)	
)	
Plaintiff,)	
)	Case No. 1:09-CV-00098-JRH-WLB
vs.)	
)	
James R. Holland II and Wettermark,)	
Holland & Keith, LLC,)	
)	
Defendants.)	
)	

Bench Brief Regarding Application of O.C.G.A. § 51-12-6

This Court has correctly assessed that in light of the entry of judgment as a matter of law on the damages portion of Plaintiff's lone surviving tort claim, Plaintiff lost his entitlement to punitive damages. *Chaney v. Harrison & Lynam, LLC*, 308 Ga. App. 808, 819, 708 S.E.2d 672, 681 (2011) (granting summary judgment on punitive damages claim because summary judgment was granted on underlying tort); *Lewis v. Meredith Corp.*, 293 Ga. App. 747, 750, 667 S.E.2d 716, 719 (2008) ("Under Georgia law, a plaintiff cannot recover punitive damages when the underlying tort claim fails."); *Benefit Support, Inc. v. Hall County*, 281 Ga. App. 825, 833, 637 S.E.2d 763, 771 (2006) (same); *Boeing Co. v. Blane Int'l Group*, 276 Ga. App. 672, 676, 624 S.E.2d 227, 231 (2005) (concluding punitive damages award "cannot survive the absence of compensatory damages on the underlying claim").

O.C.G.A. § 51-12-6 states that when the “entire injury is to the peace, happiness, or feelings of the plaintiff, no measure of damages can be prescribed except the enlightened consciences of impartial jurors.” Accordingly, in order to recover in this case, Plaintiff must demonstrate a causal connection between the Defendants’ alleged intentional misconduct and injury to “the peace, happiness, or feelings of the plaintiff.”

Defendants ask this Court to consider the following authority in determining its instructions to the jury. First, Plaintiff may not argue to the jury that it is to punish Defendants. In *Carlin v. Fuller*, 196 Ga. App. 54, 55 (1990), a case where a counterclaim plaintiff sought recovery under O.C.G.A. § 51-12-6, the Georgia Court of Appeals reversed a verdict due to the trial court’s refusal to give a curative instruction after the counterclaim plaintiff’s attorney “emphatically argued that [counterclaim defendant] ‘needs to be punished and penalized so that she won’t ever think about doing it again.’”

Second, Defendants’ “worldly circumstances” are not the proper subject of inquiry in this case. Although opposing counsel cited to a case that seemed to suggest otherwise, the issue is resolved by *Hudson v. State Farm Mut. Ins. Co.*, 201 Ga. App. 351, 353 (1991), where the Court of Appeals found that the trial court had not erred in refusing to allow testimony about the defendant insurance company’s worldly circumstances “pursuant to O.C.G.A. § 51-12-6.” As the Court noted, the “language as to “worldly circumstances” was removed from that Code section, effective July 1987. The language has no application here” *Id.* It appears, then, that the pattern charge indicating that a

defendant's worldly circumstances are at issue in a case brought under 51-12-6 is outdated and should be modified accordingly.

Respectfully submitted this the 5th day of October, 2011.

Carlock, Copeland & Stair, LLP

191 Peachtree Street, N.E.
Suite 3600
Atlanta, GA 30303
(404) 522-8220

By: /s/ Peter Werdesheim
Johannes S. Kingma
Georgia Bar No. 421650
Peter Werdesheim
Georgia Bar No. 748330
Attorneys for Defendants

Certificate of Service

I hereby certify a true and correct copy of *Bench Brief Regarding Application of O.C.G.A. § 51-12-6* was served upon the following individuals through the Court's CM/ECF system, addressed as follows:

Frank J. Beltran, Esq.
Brian R. Smith, Esq.
Atlantic Center Plaza, Suite 2450
1180 W. Peachtree St.
Atlanta, GA 30309

Danny L. Durham, Esq.
Henry N. Crane, III, Esq.
Durham & Crane Law Firm
2350 Washington Rd.
Augusta, GA 30904

This the 5th day of October, 2011.

Carlock, Copeland & Stair, LLP

191 Peachtree Street
Suite 3600
Atlanta, GA 30303
(404) 522-8220

By: /s/ Peter Werdesheim
Peter Werdesheim
Georgia Bar No. 748330